

Brian D. Sullivan
FOX ROTHSCHILD LLP
49 Market Street
Morristown, NJ 07960
Tel: (973) 994-7525
Email: bsullivan@foxrothschild.com
Attorneys for Defendant

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

NEW JERSEY COALITION OF
AUTOMOTIVE RETAILERS, INC.,

Plaintiff,

v.

MAZDA MOTOR OF AMERICA, INC.

Defendant.

Case No. 3:18-cv-14563-BRM-TJB

**DECLARATION OF KYLE KACZMAREK IN OPPOSITION TO
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

I, Kyle Kaczmarek, declare:

1. I am the Network Operations Manager for the Northeast Region of defendant Mazda Motor of America, Inc. d/b/a Mazda North American Operations (“Mazda”). I have personal knowledge of the facts stated herein.

2. I am aware that Plaintiff New Jersey Coalition of Automotive Retailers, Inc. (“NJ CAR”) has filed a Complaint against Mazda, and that Mazda has filed a motion to dismiss that Complaint.

3. I have been advised that, if Mazda’s motion to dismiss is denied, Mazda is permitted to assert certain defenses to the Complaint, including the defense that the Mazda dealers whom NJ CAR purports to represent in this action have failed to substantially comply with the requirements of their franchise agreements.

4. I am aware that in opposition to Mazda’s motion to dismiss, NJ CAR has submitted declarations from two New Jersey Mazda dealers: Maxon Auto Enterprises d/b/a Maxon Mazda (“Maxon”) and SIL, LLC d/b/a Irwin Mazda (“Irwin”).

5. As explained below, Maxon and Irwin have failed to substantially comply with the requirements of their franchise agreements.

6. Mazda refers to its franchise agreement as the Dealer Agreement.

7. Under Section 16.A of the Dealer Agreement, a Dealer is obligated to “take all reasonable steps to ensure that each customer is completely satisfied with his or her Mazda Products and Dealer’s services and practices.”

8. Under Section 16.C of the Dealer Agreement, Dealer’s “performance in promoting customer satisfaction and maintaining their customer service

philosophy shall be evaluated on a regular basis through systems established by Mazda from time to time, together with survey results and unsolicited customer comments.”

9. Mazda’s system for evaluating a dealership’s customer satisfaction is called “CX.”

10. Maxon’s CX scores are below Mazda’s standards.

11. For example, over the past two years, Maxon has ranked in the bottom half of all Mazda dealers in New Jersey for both sales and service CX.

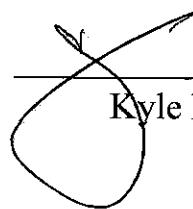
12. In addition, Maxon’s dealer loyalty, which measures a dealership’s ability to retain sales customers, and service retention, which measures a dealership’s ability to retain service customers, have ranked at or near the bottom of all Mazda dealers in New Jersey for each of the past two years.

13. Under Section 13.B of the Dealer Agreement, a Dealer is obligated to “at all times honestly, energetically, professionally and effectively promote the purchase of Mazda Products,” including new and certified pre-owned (“CPO”) Mazda vehicles, by, among other things, “[a]dvertising, merchandising, promoting and selling such Mazda Products in an active and effective manner through Dealer’s own advertising and sales promotion activities.”

14. Irwin has not substantially complied with these requirements.

15. For example, over the past two years, Irwin's sales of new and CPO Mazda vehicles have declined year over year, and have ranked at or near the bottom of all Mazda dealers in New Jersey.

I declare under penalty of perjury that the foregoing is true and correct.
Executed in Bridgewater, New Jersey on January 22, 2019.



Kyle Kaczmarek